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**To:** Tom Hughes

**From:** Donald E Stout

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**Date:** January 30, 2003

**Re: U.S. Serial No. 09/406,088**

**CC:**

**Filed: September 27, 1999**

**Sami USKELA et al**

**Urgent**     **For Review**     **Please Comment**     **Please Reply**     **Please Recycle**

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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Sami USKELA et al.  
Application No.: 09/40~~5~~088  
Filing Date: September 27, 1999  
Title: SPONSORED NETWORK GAMES  
Art Unit: 3713  
Examiner: T. Hughes

**PETITION TO WITHHOLD ERRONEOUS HOLDING OF  
ABANDONMENT AND PETITION PURSUANT TO 37 CFR §1.181**

Assistant Commissioner for Patents  
Washington, D.C. 20231

January 30, 2003

Sir:

Examiner Hughes called the undersigned on January 28, 2003 to advise that the above-referenced application was abandoned.

Applicants request withdrawal of the holding of abandonment as being erroneous and further petition the Commissioner pursuant to 37 C.F.R. §1.181 to suspend any requirement of the rules regarding the abandonment including the Examiner's apparent holding that Applicants did not comply with 37 C.F.R. §1.133 regarding responding to the interview reflected in the Advisory Action of November 9, 2001.

Examiner Hughes apologized to the undersigned during a recent conversation for the delay by the PTO. Examiner Hughes stated that the file sat on the Assistant

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Examiner's desk for over a year but, even in view of all of the above facts, the case was abandoned for Applicants failure to file a timely response to the interview.

Applicants petition withdrawal of the holding of abandonment as predicated on the following facts. Applicants filed a timely response as an Amendment Under 37 C.F.R. §1.116 on October 3, 2001. Thereafter, the undersigned had an interview with Examiner J. Harrison. During that interview, the Final Rejection was discussed, including the various claims under Final Rejection all of which is reflected by the Interview Summary Record. The Examiner concluded at the end of the Interview Summary Record that prosecution would be reopened for multiple reasons, including proper consideration of Applicants' previous arguments as reflected in the October 3, 2001 Amendment After Final and the citation of new prior art. The undersigned relied upon that fact and further filed a Status Request on February 11, 2002.

What has happened here clearly is that Examiner J. Harrison failed to check the box that no response was required even though the nature of the Interview Summary Record shows that no response is required or could have been given since Primary Examiner Harrison agreed that she was aware that "applicants' arguments deserved consideration" and prior art "which was relevant" needed to be cited.

Examiner Hughes has repeatedly indicated to the undersigned that a response was required to be filed but has not explained what a proper response would be under the above circumstances. In fact, Primary Examiner Harrison agreed that it was the PTO's job to consider Applicants' arguments and cite new prior art. Therefore, it is clear that the written record reflects that no response was needed after the Interview since the next action was going to be reopening of

prosecution to address the above two points. Moreover, what is clear is that the earlier Amendment of October 3, 2001 was completely responsive to the Final Rejection so much so that the Primary Examiner agreed that the Final Rejection would be withdrawn to address Applicants' arguments and cite new prior art. Under that set of circumstances, the previous Final Rejection was moot because any new action, as the result of newly applied prior art and proper consideration of Applicants' arguments, could not be anticipated in any meaningful manner in a response to the interview. Simply stated, the failure of Primary Examiner Harrison to check the box on the Interview Summary Record that no response was necessary, when it is clear from the substance of the Interview Summary Record that none needed be filed, is Examiner Hughes' basis for holding the case to be abandoned.

Based upon these facts, it is requested that the case be forthwith revived and an Office Action be forthwith issued. The relief that Applicants request is that any requirement under Rule 133, under these circumstances as construed by the Examiner Hughes as requiring a second written response to the Final Rejection, be waived since it is apparent that no response of any nature could be responsive to a yet unstated action of the Patent Office.

The Status Request of February 11, 2002 may be treated as a Petition Under 37 C.F.R. §1.181 including a request that any requirement for filing a written response to the Interview be waived. If the requirement of the Rule 133, as construed by Examiner Hughes that a further written response was necessary, is waived or the Interview Summary Record is treated to have not been completed in that the box that no reply was necessary was inadvertently not checked, then no violation, as construed by the Examiner of 37 C.F.R. §1.133, has occurred.

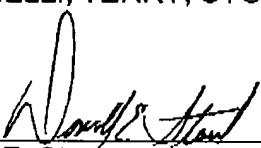
Therefore, because of compliance with the Rule 1.33, the application may be reinstated to pending status and a new Office Action issued forthwith.

Prompt resolution of this matter is requested in view of the long delay which Mr. Hughes has openly admitted has occurred which is totally the fault of the PTO.

To the extent necessary, the applicants petition for an extension of time under 37 CFR §1.136. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, or credit any overpayment of fees, to the deposit account of Antonelli, Terry, Stout & Kraus, LLP, Deposit Account No. 01-2135 (017.37498X00).

Respectfully submitted,

ANTONELLI, TERRY, STOUT & KRAUS, LLP

  
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DES:dlh